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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/055,714      | 01/22/2002  | Ivan Sepetka         | 005-010             | 6225             |

7590 09/15/2003  
HOEKENDIJK & LYNCH, LLP  
P.O. Box 4787  
Burlingame, CA 94011-4878

EXAMINER

TRUONG, KEVIN THAO

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3731

DATE MAILED: 09/15/2003

7

Please find below and/or attached an Office communication concerning this application or proceeding.

NK

|                              |                               |                                |  |
|------------------------------|-------------------------------|--------------------------------|--|
| <b>Office Action Summary</b> | Application No.<br>10/055,714 | Applicant(s)<br>SEPETKA ET AL. |  |
|                              | Examiner<br>Kevin T. Truong   | Art Unit<br>3731               |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on Election 9/11/03.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-29 and 114-116 is/are pending in the application.
- 4a) Of the above claim(s) 4-29 and 114-116 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>6</u> . | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election without traverse of Group I, claims 1-3, 7-20, and 114 in Paper No. 5 is acknowledged.

Note further restriction is required as states below:

2. This application contains claims directed to the following patentably distinct species of the claimed invention: Species in figures 1-4; Species in figures 5 and 6; Species in figures 7 and 8; Species in figures 11-13; Species in figure 14; Species in figures 15-17; Species in figures 18-21; Species in figure 22; Species in figures 23 and 24; Species in figure 25; Species in figures 26 and 27; Species in figures 28-33; Species in figures 34-40; Species in figures 41-45; Species in figures 46-51; Species in figures 52-54; Species in figures 56-57; Species in figure 58; Species in figure 59; Species in figure 60; Species in figure 61; Species in figure 63; Species in figure 64; Species in figures 65-67; Species in figures 68-69; Species in figures 70-73; Species in figure 74; Species in figure 75; Species in figure 76; Species in figures 77-79; Species in figures 80-81; Species in figure 82; and Species in figure 83.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim

is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

3. During a telephone conversation with Mr. Jens Hoekendijk on 9/11/2003 a provisional election was made without traverse to prosecute the invention of figures 56 and 67, claims 1-3. Affirmation of this election must be made by applicant in replying to this Office action. Claims 4-29 and 114-116 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

4. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim

remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being fully anticipated by Wensel et al. (U.S. 5,895,398).


As to claim 1, Wensel et al discloses in figures 1a-1f, a method of providing an obstruction removing element (10) comprising a wire (18) having a distal end coupled to an insertion element (16 (at 24)) and proximal end which is slidable on the insertion element (16) and positioning the obstruction removing element (10) in a catheter (12) with the obstruction removing element (10) in the collapsed position (shown in figure 1b).

As to claim 2, wherein distal end (24) of said insertion element (16) is considered a stop to prevent distal advancement of the proximal end of said obstruction removing element (10).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin T. Truong whose telephone number is 703-308-3767. The examiner can normally be reached on Monday-Thursday from 8:00 AM to 6:00 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Milano can be reached on 703-308-2496. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-3313 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.



Kevin T. Truong  
Primary Examiner  
Art Unit 3731

ktt  
September 11, 2003